

2/4/2021

CM/ECF LIVE(C) - U.S. District Court:nywd

APPEAL,VictimNotify

**U.S. DISTRICT COURT**  
**U.S. District Court, Western District of New York (Buffalo)**  
**CRIMINAL DOCKET FOR CASE #: 1:19-cr-00206-RJA-1**

Case title: USA v. Garigen  
Magistrate judge case number: 1:19-mj-01074-JJM

Date Filed: 11/12/2019  
Date Terminated: 12/31/2020

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Assigned to: Hon. Richard J. Arcara

**Defendant (1)**

**Shelby Garigen**  
*TERMINATED: 12/31/2020*

represented by **Steven B. Bengart**  
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*Designation: Retained*

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*TERMINATED: 01/28/2021**Designation: Retained***Pending Counts**

18:2252A.F ACTIVITIES RELATING TO  
MATERIAL CONTAINING CHILD  
PORNOGRAPHY  
(1)

**Disposition**

Deft is committed to the custody of the Bureau of Prisons for a term of 37 months; the cost of incarceration fee is waived. Upon release from imprisonment, Deft shall be placed on supervised release for a term of 5 years with standard and special conditions as set forth in the Judgment of Conviction including, but not limited to, those set forth herein. Deft shall cooperate in the collection of a DNA sample as required by the Justice for All Act of 2004. Since the instant offense occurred after 9/13/94, drug testing is required by the 1994 Crime Control Act. Deft shall register with the state sex offense registration agency in any state where the Deft resides, is employed, carries on a vocation, or is a student, and shall provide proof of registration to USPO. The Court finds that the Deft is indigent and cannot afford to pay the mandatory \$5,000.00 Justice for Victims of Trafficking Act of 2015 assessment. The Court finds that because no restitution is sought by the victims, the Deft need not pay the mandatory restitution set forth in the Amy, Vicky and Andy Child Pornography Victim Assistance Act of 2018. Deft shall forfeit her interest in the property set forth in Section VIII of the plea agreement and incorporated herein. No fine. Deft to pay \$100.00 special mandatory assessment, due immediately. The Court grants voluntary surrender. The Court recommends that Deft be designated to a facility as close to Buffalo, New York as possible. The Court grants the Govt's oral motion to dismiss criminal complaint No. 19-mj-1074 as to this Deft.

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Highest Offense Level (Terminated)**

None

**Disposition**

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**Complaints**

18:2252.F - SEXUAL EXPLOITATION OF  
MINORS, 18:2252A.F - ACTIVITIES  
RELATING TO MATERIAL  
CONTAINING CHILD PORNOGRAPHY

**Disposition****Plaintiff****USA**

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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
06/19/2019	<u><a href="#">1</a></u>	COMPLAINT as to Shelby Garigen (1). (DAZ) [1:19-mj-01074-JJM] (Entered: 06/20/2019)
06/20/2019	2	Minute Entry for proceedings held before Hon. Jeremiah J. McCarthy:Initial Appearance as to Shelby Garigen held on 6/20/2019. Defendant acknowledges receipt of Criminal Complaint. Government summarizes charges and potential penalties. Defendant advised of her rights including right to counsel. Court understands defendant will retain counsel. Defendant confirms and indicates she intends to retain. FPD FONDA KUBIAK will represent defendant for today's proceeding only. Defendant advised of her right to a preliminary hearing. Defense defers to retained atty. Government not opposed to the conditions recommended by USPO. Issues with some conditions, court will revisit conditions when retained counsel appears but defendant will be released on conditions as stated. Defendant understands the conditions and that any violation could lead to additional criminal charges and possible revocation of her release. Court sets an attorney appearance for June 25, 2019 at 10:30 AM. Government moves to exclude time from today through June 25, 2019 for the reasons stated on the record. Defense has no objection. Court adopts counsel's representations as its findings concerning exclusion of time between today and June 25, 2019 from the STA calendar. APPEARANCES: AUSA A.

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		Mango; F. Kubiak w/deft; USPO A. McNeal. (FTR GOLD) (DAZ) [1:19-mj-01074-JJM] (Entered: 06/20/2019)
06/20/2019	<u>3</u>	MOTION to Seal <i>Criminal Complaint</i> by USA as to Shelby Garigen. (Mango, Aaron) [1:19-mj-01074-JJM] (Entered: 06/20/2019)
06/21/2019	4	TEXT ORDER as to Shelby Garigen (1): The governments motion <u>3</u> to seal the complaint is granted on condition that by the close of business today the government publicly file a redacted version of the complaint redacting only that information which might identify Victim 1. SO ORDERED. Issued by Hon. Jeremiah J. McCarthy on 6/21/19.(DAZ) [1:19-mj-01074-JJM] (Entered: 06/21/2019)
06/21/2019	<u>5</u>	REDACTION by USA as to Shelby Garigen to <u>1</u> Complaint (Mango, Aaron) [1:19-mj-01074-JJM] (Entered: 06/21/2019)
06/21/2019	<u>6</u>	ORDER Setting Conditions of Release as to Shelby Garigen (1). Signed by Hon. Jeremiah J. McCarthy on 6/20/19.(DAZ) [1:19-mj-01074-JJM] (Entered: 06/21/2019)
06/25/2019	7	Minute Entry for proceedings held before Hon. Jeremiah J. McCarthy:Attorney Appointment Hearing as to Shelby Garigen held on 6/25/2019. Defendant requests additional time to finalize appointment of counsel. Court sets attorney appointment hearing for July 9, 2019 at 11:30 AM. Government moves that the time from today through July 9, 2019 be excluded from the calculations of the STA clock in the interests of justice pursuant to Title 18 U.S.C. 3161(h)(7)(A) and 3161(h)(7)(B)(iv). Defense agrees. Defendant has been compliant with conditions of release. Court adopts counsel's representations as its findings concerning exclusion of time between today and July 9, 2019 from the STA calendar. APPEARANCES: AUSA A. Mango; F. Kubiak w/deft. (FTR GOLD) (DAZ) [1:19-mj-01074-JJM] (Entered: 06/25/2019)
06/25/2019		CALENDAR EVENT as to Shelby Garigen: Attorney Appointment Hearing set for 7/9/2019 at 11:30 AM before Hon. Jeremiah J. McCarthy. (DAZ) [1:19-mj-01074-JJM] (Entered: 06/25/2019)
07/09/2019	8	Minute Entry for proceedings held before Hon. Jeremiah J. McCarthy:Attorney Appointment/Status Conference as to Shelby Garigen held on 7/9/2019. Defendant has retained James DeMarco III and Steven Bengart. Preliminary Hearing now waived. Issue regarding conditions of release - court will amend conditions so defendant can attend activities for her six year old. Any contact with teenagers will need to be reported. COURT ORDERS PURSUANT TO RULE 48(b) OF THE FRCrP, THIS CASE WILL BE DEEMED DISMISSED AS OF 12:00 PM ON 10/7/2019. Government will move to have all days between today through October 7, 2019 excluded from the Speedy Trial Clock pursuant to Title 18 U.S.C. 3161(h)(7)(A) and 3161(h)(7)(B)(iv). Defense has no objections. Court adopts counsel's representations as its findings concerning exclusion of time between today and October 7, 2019 from the STA calendar. For the reasons stated by counsel the court finds that the ends of justice served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial. APPEARANCES: AUSA A. Mango; S. Bengart w/deft; USPO M. Macaluso. (FTR GOLD) (DAZ) [1:19-mj-01074-JJM] (Entered: 07/09/2019)
07/09/2019	9	TEXT ORDER as to Shelby Garigen: As agreed to by the parties during the July 9, 2019 proceeding, pursuant to Fed. R. Crim. P. (Rule) 48(b), the Complaint will be automatically dismissed, without prejudice, on October 7, 2019 at 12:00 p.m. without the need for a further order. The Rule 48(b) deadline will not be extended for ongoing plea negotiations short of an actual plea agreement. Defendant may accelerate the Rule 48(b) dismissal deadline by filing a notice to that effect, in which case the dismissal will occur (without further order) at 12:00 p.m. on the 10th business day thereafter; provided, however, that in no event will the dismissal occur less than 30 or more than 90 days from July 9, 2019,

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		unless extended by the court for reasons other than ongoing plea negotiations. Any defendant who is in custody on the Complaint and not subject to another detainer or warrant at that time of the dismissal shall immediately be released from custody, and the conditions of release (including bail) imposed as a result of the Complaint as to any defendant who is not in custody at that time shall immediately terminate. For the reasons stated by the government and agreed to by defendant, the ends of justice served by this continuance outweigh the best interest of the public and defendant in a speedy trial, and the time between July 9, 2019 and October 7, 2019 is therefore excluded from the Speedy Trial Act calendar pursuant to 18 U.S.C. Sections 3161(h)(7)(A) and 3161(h)(7)(B)(iv). SO ORDERED. Issued by Hon. Jeremiah J. McCarthy on 7/9/19.(DAZ) [1:19-mj-01074-JJM] (Entered: 07/09/2019)
09/04/2019	<a href="#">10</a>	Arrest Warrant Returned Executed on 6/19/19 in case as to Shelby Garigen. (DAZ) [1:19-mj-01074-JJM] (Entered: 09/10/2019)
10/04/2019	<a href="#">11</a>	MOTION to Adjourn <i>THE RULE 48(b) DISMISSAL DATE</i> by USA as to Shelby Garigen. (Mango, Aaron) [1:19-mj-01074-JJM] (Entered: 10/04/2019)
10/07/2019	12	TEXT ORDER as to Shelby Garigen (1): The government's motion <a href="#">11</a> to adjourn the Fed. R. Crim. P. ("Rule") 48(b) dismissal date and exclude time under the Speedy Trial Act, upon consent of the defendant, is granted. Absent a plea agreement, no further adjournments will be granted. Pursuant to Rule 48(b) the Complaint will be automatically dismissed, without prejudice, on November 15, 2019 at 12:00 p.m. without the need for a further order. Any defendant who is in custody on the Complaint and not subject to another detainer or warrant at that time shall immediately be released from custody, and the conditions of release (including bail) imposed as a result of the Complaint as to any defendant who is not in custody at that time shall immediately terminate. For the reasons stated in the motion and agreed to by the parties, the ends of justice served by this continuance outweigh the best interest of the public and defendant in a speedy trial, and the time between October 7, 2019 and November 15, 2019 is therefore excluded from the Speedy Trial Act calendar. SO ORDERED. Issued by Hon. Jeremiah J. McCarthy on 10/7/19.(DAZ) [1:19-mj-01074-JJM] (Entered: 10/07/2019)
10/08/2019		NOTICE OF SCHEDULING as to Shelby Garigen: Waiver of Indictment and Plea set for 11/12/2019 at 9:00 AM before Hon. Richard J. Arcara in 19-CR-206 (JDK) [1:19-mj-01074-JJM] (Entered: 10/08/2019)
11/12/2019	<a href="#">13</a>	WAIVER OF INDICTMENT by Shelby Garigen. (KLH) (Entered: 11/13/2019)
11/12/2019	<a href="#">14</a>	INFORMATION as to Shelby Garigen (1) count(s) 1. (KLH) (Entered: 11/13/2019)
11/12/2019	<a href="#">15</a>	PLEA AGREEMENT as to Shelby Garigen. (KLH) (Entered: 11/13/2019)
11/12/2019		Set/Reset Hearings as to Shelby Garigen: Sentencing set for 2/28/2020 01:00 PM before Hon. Richard J. Arcara. (DJD) (Entered: 11/14/2019)
11/12/2019		Minute Entry for proceeding held 11/12/2019 before Hon. Richard J. Arcara as to Deft, Shelby Garigen (1). Waiver of Indictment and Plea proceeding is held. Deft waives Indictment and pleads guilty to a one-count Information (Count 1). The following schedule is established for the submission of sentencing papers: initial Presentence Investigation Report due by 1/14/2020; Statement with Respect to Sentencing Factors, objections and/or motions due by 2/7/2020; responses to objections and/or motions due by 2/14/2020; character letters and/or sentencing memorandum in support of the defendant due by 2/14/2020; motions to adjourn sentencing due by 2/18/2020; final Presentence Investigation Report due by 2/21/2020; government's response papers to legal arguments in defendant's sentencing memorandum due by 2/21/2020. <b>Sentencing is scheduled for 2/28/2020 at 1:00 PM before Hon. Richard J. Arcara.</b> Deft is continued on release in



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		<p>accordance with the terms and conditions previously imposed by the Magistrate Judge. Appearances: Govt by Aaron Mango; Deft by James DeMarco (with Deft); USPO No appearance</p> <p>-PROBATION NOTIFIED OF PLEA-</p> <p>(Court Reporter Megan Pelka.)(DJD) (Entered: 11/19/2019)</p>
11/12/2019	16	<p>TEXT ORDER as to defendant, Shelby Garigen (1). The following schedule is established for the submission of sentencing papers: initial Presentence Investigation Report due by 1/14/2020; Statement with Respect to Sentencing Factors, objections and/or motions due by 2/7/2020; responses to objections and/or motions due by 2/14/2020; character letters and/or sentencing memorandum in support of the defendant due by 2/14/2020; motions to adjourn sentencing due by 2/18/2020; final Presentence Investigation Report due by 2/21/2020; government's response papers to legal arguments in defendant's sentencing memorandum due by 2/21/2020. SO ORDERED. Issued by Hon. Richard J. Arcara on November 12, 2019.(DJD) (Entered: 11/19/2019)</p>
11/25/2019	<a href="#">17</a>	<p>PRELIMINARY ORDER OF FORFEITURE as to Shelby Garigen. Signed by Hon. Richard J. Arcara on 11/20/2019.(KLH) (Entered: 11/25/2019)</p>
12/03/2019	<a href="#">18</a>	<p>MOTION to Travel by Shelby Garigen. (DeMarco, James) (Entered: 12/03/2019)</p>
12/04/2019	19	<p>TEXT ORDER as to Shelby Garigen: Defendant's <a href="#">18</a> Motion to Travel to and from Pittsburgh, Pennsylvania on December 7, 2019 is granted. Defendant Garigen shall provide her supervising officer with the details of her travel, and shall immediately notify her supervising officer of any changes to her itinerary. SO ORDERED. Issued by Hon. Richard J. Arcara on 12/4/2019.(LAS) (Entered: 12/04/2019)</p>
12/31/2019	<a href="#">20</a>	<p>MOTION to Travel by Shelby Garigen. (DeMarco, James) (Entered: 12/31/2019)</p>
01/03/2020	21	<p>TEXT ORDER granting in part and denying in part <a href="#">20</a> Motion to Travel as to Shelby Garigen. Defendant Garigen may travel to and from Pittsburgh, Pennsylvania on January 11, 2020, on the condition that the defendant provides her supervising officer with the details of her travel and immediately notifies the officer of any change to her itinerary. However, the additional request of defendant Garigen to go to Clarence High School on January 22, 2020, is denied. Issued by Hon. Richard J. Arcara on January 3, 2020. (WJG) (Entered: 01/03/2020)</p>
01/07/2020	<a href="#">22</a>	<p>MOTION for Protective Order by USA as to Shelby Garigen. (Mango, Aaron) (Entered: 01/07/2020)</p>
01/07/2020	<a href="#">23</a>	<p>PROTECTIVE ORDER as to Shelby Garigen. Signed by Hon. Richard J. Arcara on 1/6/2020.(KM) (Entered: 01/07/2020)</p>
01/13/2020	<a href="#">24</a>	<p>PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 01/13/2020)</p>
01/23/2020	<a href="#">25</a>	<p>MOTION for Extension of Time to File by Shelby Garigen. (DeMarco, James) (Entered: 01/23/2020)</p>
01/24/2020	26	<p>TEXT ORDER as to defendant, Shelby Garigen. Defendant filed <a href="#">25</a> a motion, with the indicated consent of the United States, to adjourn the 2/28/2020 sentencing date as well as the due dates for the submission of sentencing papers. The motion is granted. <b>Sentencing is adjourned to 3/30/2020 at 3:30 PM before Hon. Richard J. Arcara.</b> The schedule for the submission of sentencing papers is amended as follows: Statement with Respect to Sentencing Factors, objections and/or motions, including 5K1.1 motion, government notice not to file 5K1.1 motion, or government motion for extension of time to file 5K1.1</p>

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		motion if applicable, due by 3/6/2020; notice by the defendant of government failure to file 5K1.1 motion, if applicable, due by 3/11/2020; responses to objections and/or motions due by 3/13/2020; character letters and/or sentencing memorandum in support of the defendant due by 3/13/2020; motion to adjourn sentencing due by 3/20/2020; final Presentence Investigation Report due by 3/20/2020; government's response papers to legal arguments in defendant's sentencing memorandum due by 3/20/2020. SO ORDERED. Issued by Hon. Richard J. Arcara on January 24, 2020.(DJD) (Entered: 01/24/2020)
02/18/2020	<a href="#">27</a>	RECOMMENDATION (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 02/18/2020)
02/28/2020	<a href="#">28</a>	MOTION to Modify Conditions of Release by Shelby Garigen. (DeMarco, James) (Entered: 02/28/2020)
03/05/2020	29	TEXT ORDER granting in part and denying in part Motion to Modify Conditions of Release <a href="#">28</a> as to Shelby Garigen. Defendant Garigen may travel to Hershey, Pennsylvania, March 6, 2020, returning March 7, 2020, and to Myrtle Beach, South Carolina on March 20, 2020, returning March 23, 2020, on the condition that the defendant cooperates fully with her supervising officer and provides her supervising officer with the details of her travel and immediately notifies the officer of any change to her itinerary. The additional request of defendant Garigen to go to Clarence High School on March 12, 2020, is denied. Issued by Hon. Richard J. Arcara on March 5, 2020. (WJG) (Entered: 03/05/2020)
03/06/2020	<a href="#">30</a>	STATEMENT WITH RESPECT TO SENTENCING FACTORS by USA as to Shelby Garigen (Mango, Aaron) (Entered: 03/06/2020)
03/06/2020	<a href="#">31</a>	AFFIRMATION by Shelby Garigen (DeMarco, James) (Entered: 03/06/2020)
03/13/2020	<a href="#">32</a>	Defendant's Sentencing Memorandum by Shelby Garigen. (DeMarco, James) Modified on 3/16/2020. (BK) (Entered: 03/13/2020)
03/16/2020		E-Filing Notification: Document filed improperly as a motion. Court terminated motion and modified docket text to correctly reflect filing event. No action required. <a href="#">32</a> MOTION for Downward Departure (BK) (Entered: 03/16/2020)
03/23/2020	<a href="#">33</a>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (JMH) (Entered: 03/23/2020)
03/24/2020	34	TEXT ORDER as to defendant Shelby Garigen: In view of the March 13, 2020 national emergency declaration by the President of the United States in response to the outbreak of Corona Disease 2019, local conditions, and the severity of risks posed to participants in court proceedings and the public, the March 30, 2020 sentencing is adjourned. <b>The new sentencing date is May 12, 2020 at 1:30 PM</b> , but if counsel concludes that an earlier appearance is necessary, counsel shall file a motion stating the grounds for seeking an earlier appearance. SO ORDERED. Issued by Hon. Richard J. Arcara on March 24, 2020. (DJD) (Entered: 03/24/2020)
05/04/2020	<a href="#">35</a>	MEMORANDUM IN OPPOSITION <i>GOVERNMENT'S RESPONSE TO THE DEFENDANTS SENTENCING MEMORANDUM</i> by USA as to Shelby Garigen (Attachments: # <a href="#">1</a> Exhibit 1)(Mango, Aaron) (Entered: 05/04/2020)
05/05/2020	36	TEXT ORDER as to defendant Shelby Garigen. Upon the informal request of counsel for the defendant, due to a personal matter and with the informal consent of the United States, the May 12, 2020 sentencing is adjourned. The new sentencing date is June 16, 2020 at 12:30 PM before Hon. Richard J. Arcara. SO ORDERED. Issued by Hon. Richard J. Arcara on May 5, 2020.(DJD) (Entered: 05/05/2020)
05/29/2020	<a href="#">37</a>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 05/29/2020)

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05/29/2020	<a href="#">38</a>	DECLARATION by USA as to Shelby Garigen <i>DECLARATION OF PUBLICATION</i> (Kaufman, Richard) (Entered: 05/29/2020)
06/12/2020	<a href="#">39</a>	MOTION <i>GOVERNMENTS NOTICE OF MOTION TO FOR AN IN-PERSON SENTENCING PROCEEDING OR ADJOURNMENT</i> by USA as to Shelby Garigen. (Mango, Aaron) (Entered: 06/12/2020)
06/15/2020	40	TEXT ORDER as to defendant Shelby Garigen. The United States filed <a href="#">39</a> a motion to adjourn the 6/16/2020 sentencing if the proceeding would be held remotely by videoconference. It was the Court's intent to proceed by remote videoconference due to the outbreak of Corona Disease 2019, local conditions, and the severity of risks posed to participants in court proceedings and the public. In consideration of the victim's parents request to be heard in-person before the Court, the motion is granted. <b>The 6/16/2020 sentencing is adjourned to 7/16/2020 at 12:30 PM before Hon. Richard J. Arcara. SO ORDERED.</b> Issued by Hon. Richard J. Arcara on June 15, 2020.(DJD) (Entered: 06/15/2020)
07/06/2020	<a href="#">41</a>	NOTICE OF ATTORNEY APPEARANCE Charles Mark Kruly appearing for USA. (Kruly, Charles) (Entered: 07/06/2020)
07/08/2020	<a href="#">42</a>	Second MOTION to Adjourn AN IN-PERSON SENTENCING PROCEEDING OR ADJOURNMENT by USA as to Shelby Garigen. (Kruly, Charles) (Entered: 07/08/2020)
07/08/2020	<a href="#">43</a>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 07/08/2020)
07/10/2020	44	TEXT ORDER as to defendant, Shelby Garigen. The United States filed <a href="#">42</a> a motion to adjourn the July 16, 2020 sentencing if the proceeding would be held remotely by video teleconferencing. In view of the Covid-19 pandemic, local conditions and the severity of risks posed to participants in court proceedings and the public, it was the Courts intent to proceed by remote video teleconferencing. After considering the motion and the indicated opposition to the motion by the defendant, the Court grants the motion and adjourns sentencing to August 20, 2020 at 12:30 PM before Hon. Richard J. Arcara. SO ORDERED. Issued by Hon. Richard J. Arcara on July 10, 2020.(DJD) (Entered: 07/10/2020)
08/11/2020	<a href="#">45</a>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 08/11/2020)
08/18/2020	<a href="#">46</a>	Second MOTION to Adjourn Sentencing by Shelby Garigen. (DeMarco, James) (Entered: 08/18/2020)
08/19/2020	<a href="#">47</a>	Second MOTION to Adjourn Sentencing by Shelby Garigen. (DeMarco, James) (Entered: 08/19/2020)
08/19/2020	48	TEXT ORDER as to defendant, Shelby Garigen (1). The defendant filed <a href="#">47</a> a motion to adjourn the 8/20/2020 sentencing for an unspecified period of time with the indicated consent of the United States. The motion is granted. <b>Sentencing is adjourned to 11/5/2020 at 12:30 PM before Hon. Richard J. Arcara.</b> The schedule for the submission of sentencing papers is amended as follows: Statement with Respect to Sentencing Factors, objections and/or motions, including 5K1.1 motion, government notice not to file 5K1.1 motion, or government motion for extension of time to file 5K1.1 motion if applicable, due by 10/15/2020; notice by the defendant of government failure to file 5K1.1 motion, if applicable, due by 10/20/2020; responses to objections and/or motions due by 10/22/2020; character letters and/or sentencing memorandum in support of the defendant due by 10/22/2020; motions to adjourn sentencing due by 10/26/2020; final Presentence Investigation Report due by 10/29/2020; government's response papers to legal arguments



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		in defendant's sentencing memorandum due by 10/29/2020. SO ORDERED. Issued by Hon. Richard J. Arcara on August 19, 2020.(DJD) (Entered: 08/19/2020)
10/27/2020	<a href="#">49</a>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 10/27/2020)
10/29/2020	50	TEXT ORDER as to defendant Shelby Garigen. The November 5, 2020 sentencing is adjourned by the Court to the proposed date of November 23, 2020 at 12:00 PM before Hon. Richard J. Arcara. SO ORDERED. Issued by Hon. Richard J. Arcara on October 29, 2020.(DJD) (Entered: 10/29/2020)
11/16/2020	<a href="#">51</a>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (JMH) (Entered: 11/16/2020)
12/11/2020	52	TEXT ORDER as to defendant, Shelby Garigen. The Court previously proposed a sentencing date of November 23, 2020. Defense counsel informally advised the Court that he was on trial that date in another matter. The Court's staff has been attempting to reschedule this matter with counsel. After several informal communications, it has been determined that the sentencing date acceptable to the parties is <b>December 22, 2020 at 2:30 PM</b> . Any further sentencing submissions, including a formal request for a non-guidelines sentence, are to be filed by December 15, 2020. Responses are to be filed by December 18, 2020 at 12:00 PM. SO ORDERED. Issued by Hon. Richard J. Arcara on December 11, 2020.(DJD) (Entered: 12/11/2020)
12/15/2020	<a href="#">53</a>	REVISED PRESENTENCE INVESTIGATION REPORT (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 12/15/2020)
12/21/2020	<a href="#">54</a>	RECOMMENDATION (Sealed) as to Shelby Garigen. (Schrack, Joette) (Entered: 12/21/2020)
12/21/2020	<a href="#">55</a>	Defendant's Sentencing Memorandum by Shelby Garigen re <a href="#">32</a> Sentencing Memorandum (Attachments: # <a href="#">1</a> Supplement status update report for sentencing)(DeMarco, James) Modified on 12/22/2020 (CGJ). (Entered: 12/21/2020)
12/22/2020		E-Filing Notification: re <a href="#">55</a> . Docket text modified to show as Sentencing Memorandum. (CGJ) (Entered: 12/22/2020)
12/22/2020		Minute Entry for proceeding held 12/22/2020 before Hon. Richard J. Arcara as to Deft, Shelby Garigen (1), Count(s) 1 (Information). Sentencing is held. The Court accepts the terms and conditions of the plea agreement and the plea of guilty. The Presentence Investigation Report is placed in the record under seal. If an appeal is filed, counsel on appeal will be permitted access to the sealed report, except that counsel on appeal will not be permitted access to the recommendation section. The mother and father of one of the victims gives oral statements to the Court. Deft is committed to the custody of the Bureau of Prisons for a term of 37 months; the cost of incarceration fee is waived. Upon release from imprisonment, Deft shall be placed on supervised release for a term of 5 years with standard and special conditions as set forth in the Judgment of Conviction including, but not limited to, those set forth herein. Deft shall cooperate in the collection of a DNA sample as required by the Justice for All Act of 2004. Since the instant offense occurred after 9/13/94, drug testing is required by the 1994 Crime Control Act. Deft shall register with the state sex offender registration agency in any state where the Deft resides, is employed, carries on a vocation, or is a student, and shall provide proof of registration to USPO. The Court finds that the Deft is indigent and cannot afford to pay the mandatory \$5,000.00 Justice for Victims of Trafficking Act of 2015 assessment. The Court finds that because no restitution is sought by the victims, the Deft need not pay the mandatory restitution set forth in the Amy, Vicky and Andy Child Pornography Victim Assistance Act of 2018. Deft shall forfeit her interest in the property set forth in Section VIII of the plea

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		agreement and incorporated herein. No fine. Deft to pay \$100.00 special mandatory assessment, due immediately. The Court grants voluntary surrender. The Court recommends that Deft be designated to a facility as close to Buffalo, New York as possible. The Court grants the Govt's oral motion to dismiss criminal complaint No. 19-mj-1074 as to this Deft. Appearances: Govt by Charles Kruly; Deft by James DeMarco (with Deft); USPO by Lisa Ferraro (Court Reporter Megan Pelka.)(DJD) (Entered: 01/04/2021)
12/31/2020	<a href="#">56</a>	JUDGMENT as to Shelby Garigen (1), Additional certified copies forwarded to USPO, USM, US Attorney, Debt Collection, Financial Department. (SG) (Entered: 01/06/2021)
12/31/2020	<a href="#">57</a>	Sealed Document (Statement of Reasons) as to Shelby Garigen. (SG) (Entered: 01/06/2021)
01/06/2021	<a href="#">58</a>	Sealed Document(SG) (Entered: 01/07/2021)
01/06/2021	<a href="#">59</a>	Sealed Document (SG) (Entered: 01/07/2021)
01/08/2021	<a href="#">60</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of PLEA as to Shelby Garigen held on 11/12/19 before Judge Arcara. Court Reporter/Transcriber Megan E. Pelka, RPR, Contact Info 716-364-6449. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/29/2021. Redacted Transcript Deadline set for 2/8/2021. Release of Transcript Restriction set for 4/8/2021. (SG) (Entered: 01/08/2021)
01/12/2021	<a href="#">61</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of SENTENCING as to Shelby Garigen held on 12/22/20 before Judge Arcara. Court Reporter/Transcriber Megan E. Pelka, RPR, Contact Info 716-364-6449. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/2/2021. Redacted Transcript Deadline set for 2/12/2021. Release of Transcript Restriction set for 4/12/2021. (SG) (Entered: 01/12/2021)
01/19/2021	<a href="#">62</a>	NOTICE OF APPEAL. Filing fee \$ 505, receipt number 0209-4117207. (DeMarco, James) (Entered: 01/19/2021)
01/20/2021		Within 14 days of filing the Notice of Appeal, the appellant is required to electronically file with the District Court an index of filed documents it wishes the Court of Appeals to consider, called Designation of Record on Appeal. After receipt, the Clerks Office will certify and transmit the index to the Circuit. (SG) (Entered: 01/20/2021)
01/21/2021	<a href="#">63</a>	First MOTION DELAY VOLUNTARY SURRENDER DATE by Shelby Garigen. (Attachments: # <a href="#">1</a> Certificate of Service)(Eoannou, Thomas) (Entered: 01/21/2021)
01/22/2021	<a href="#">64</a>	MOTION to Withdraw as Attorney by James C. DeMarco III. by Shelby Garigen. (DeMarco, James) (Entered: 01/22/2021)
01/22/2021	<a href="#">65</a>	Certificate of Service by Shelby Garigen (DeMarco, James) (Entered: 01/22/2021)
01/22/2021	<a href="#">66</a>	TEXT ORDER as to Shelby Garigen: Defendant Shelby Garigen's motion <a href="#">63</a> to delay her voluntary surrender date to the Bureau of Prisons, scheduled for February 2, 2021, for a period of 30 days pending her anticipated motion for bail pending appeal pursuant to 18 U.S.C. § 3143(b) is DENIED. Defendant's primary, potential argument on appeal is that the Court committed a procedural error amounting to plain error, and violated Due Process, in permitting Victim 1's parents to address the Court at sentencing. This argument is contrary to settled law. It was within the Court's broad discretion to consider this information, even assuming, <i>arguendo</i> , that the parents of Victim 1 did not qualify as statutory "victims" of the subject child pornography offense. <i>See</i> 18 U.S.C. § 3771; <i>United</i>

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		<i>States v. Smith</i> , 967 F.3d 198, 215-216 (2d Cir. 2020). Defendant had ample notice that the victim-parents would be speaking during the sentencing proceeding and made no objection thereto, in either her presentencing submissions or at the sentencing itself. She then had a full and fair opportunity to respond. The implicit argument of Defendant that the Court may have imposed a substantively unreasonable sentence because the Court was unduly swayed by the victim's parents' statements is similarly unpreserved and without merit. Next, Defendant's suggestion that she will assert error on appeal on the ground that a Guidelines variance would have been required if she had argued at sentencing that a particular "anomaly" in the Sentencing Guidelines warranted a lesser sentence is also plainly contrary to settled law and does not support her request for delayed surrender. Finally, as to Defendant's arguments regarding the COVID-19 pandemic, she has not set forth any medical issues that render her particularly vulnerable to severe COVID-19 complications were she to contract the virus. The Court has considered the health risks Defendant faces due to the COVID-19 pandemic by surrendering to Bureau of Prisons custody as scheduled and declines to delay her surrender. SO ORDERED. Issued by Hon. Richard J. Arcara on 1/22/2020.(KTT) (Entered: 01/22/2021)
01/28/2021	67	TEXT ORDER granting defense counsel's <a href="#">64</a> Motion to Withdraw as Attorney for defendant. SO ORDERED. Issued by Hon. Richard J. Arcara on 1/28/2021.(LAS)  <b>-CLERK TO FOLLOW UP-</b> (Entered: 01/28/2021)
02/03/2021	<a href="#">68</a>	NOTICE OF ATTORNEY APPEARANCE: Thomas J. Eoannou appearing for Shelby Garigen (Attachments: # <a href="#">1</a> Certificate of Service)(Eoannou, Thomas) (Entered: 02/03/2021)
02/03/2021	<a href="#">69</a>	NOTICE OF ATTORNEY APPEARANCE: Thomas J. Eoannou appearing for Shelby Garigen ( <i>AMENDED</i> ) (Attachments: # <a href="#">1</a> Certificate of Service)(Eoannou, Thomas) (Entered: 02/03/2021)

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